

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANTHONY ERIC PROCTOR,	)	
Petitioner,	)	
	)	
vs.	)	Civil Action No. 06-418
	)	
PAUL J. STOWITZKY, et al.,	)	
Respondents.	)	

MEMORANDUM ORDER

On May 15, 2006, United States Magistrate Judge Robert C. Mitchell filed a Report and Recommendation (Docket No. 10), recommending that the petition for writ of habeas corpus filed by petitioner Anthony Eric Proctor (Docket No. 3) should be dismissed and a certificate of appealability should be denied for failure to exhaust available state court remedies. In the body of the Report and Recommendation, the magistrate judge also indicated that there is no merit to the petitioner's contentions.

Service of the Report and Recommendation was made on the parties, and the petitioner filed objections (Docket No. 11) on May 26, 2006.

With his objections, the petitioner has submitted state court pleadings indicating that his appeal to the Commonwealth Court of Pennsylvania was sought in that court's appellate jurisdiction and therefore he had no right to appeal to the Pennsylvania Supreme Court (Docket No. 11 Ex. A). Therefore, his petition should not be dismissed for failure to exhaust available state court remedies.

However, the fact remains that his petition is without merit. His attempt to draw a distinction between having been "successfully" discharged from the CCC – which he claims

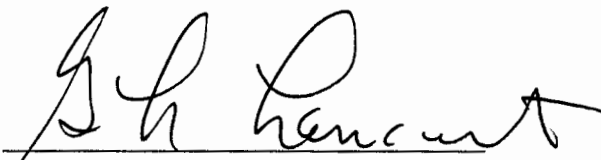
actually to have been the case here, because he was in fact expelled from it and sent back to jail, rather than having been “unsuccessfully discharged” from the CCC program as specified in the Board’s awkwardly worded Notice of Charges for the parole revocation hearing – is rejected and the petition will be dismissed for failure to state a claim.

AND NOW, this *19<sup>TH</sup>* day of June, 2006,

IT IS ORDERED that the petition for a writ of habeas corpus filed by petitioner (Docket No. 3) is dismissed and a certificate of appealability is denied for failure to state a claim.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if the petitioner desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

Magistrate Judge Mitchell’s Report and Recommendation dated May 15, 2006 (Docket No. 10) is adopted as the opinion of the Court, as modified by the instant Memorandum Order.

  
\_\_\_\_\_  
Gary L. Lancaster  
United States District Judge

cc: Anthony Eric Proctor  
CU-4530  
SRCF Mercer  
801 Butler Pike  
Mercer, PA 16137

Kemal Alexander Mericli  
Office of the Attorney General  
Civil Litigation Section  
564 Forbes Avenue  
6th Floor, Manor Complex  
Pittsburgh, PA 15219